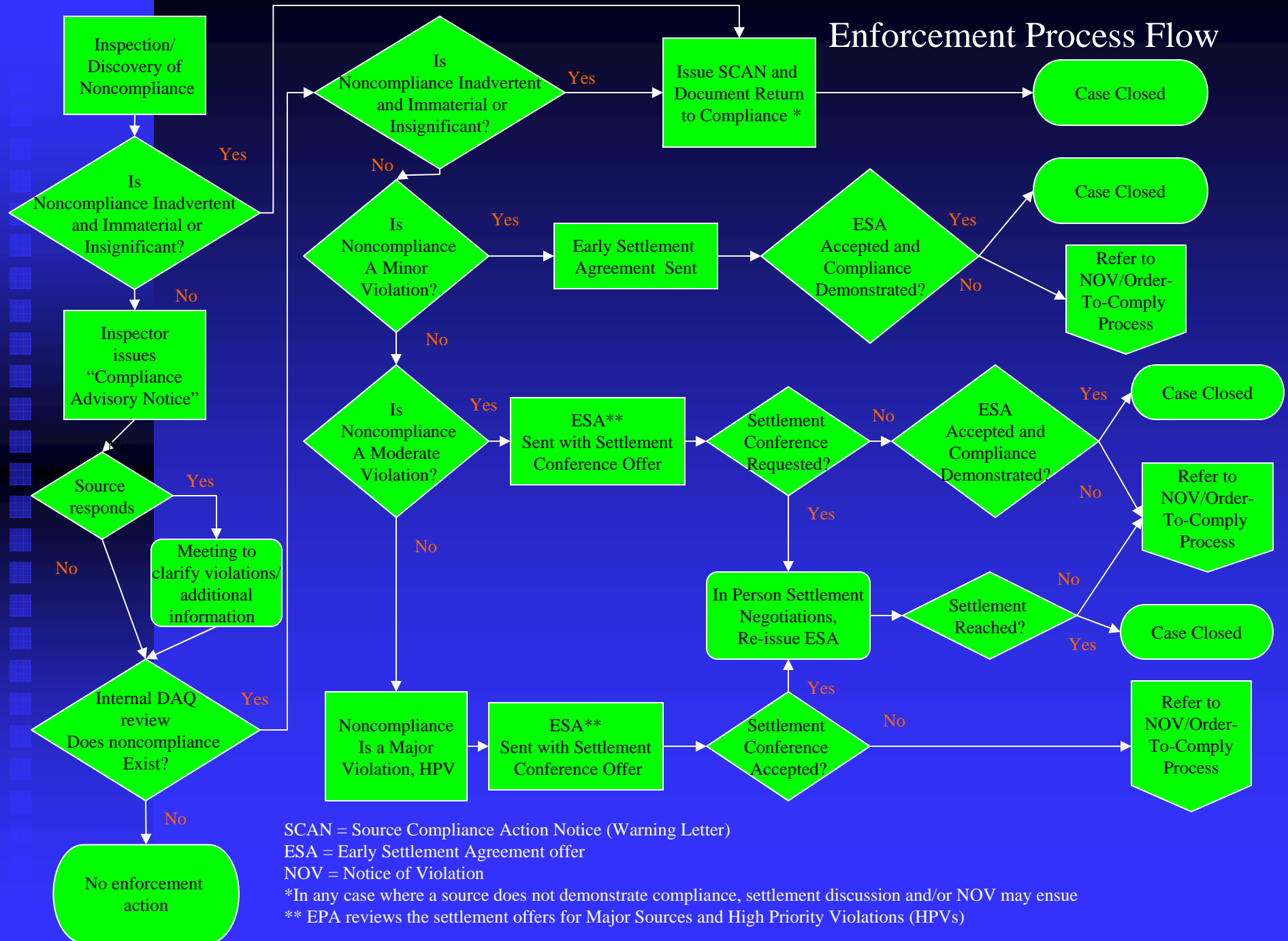


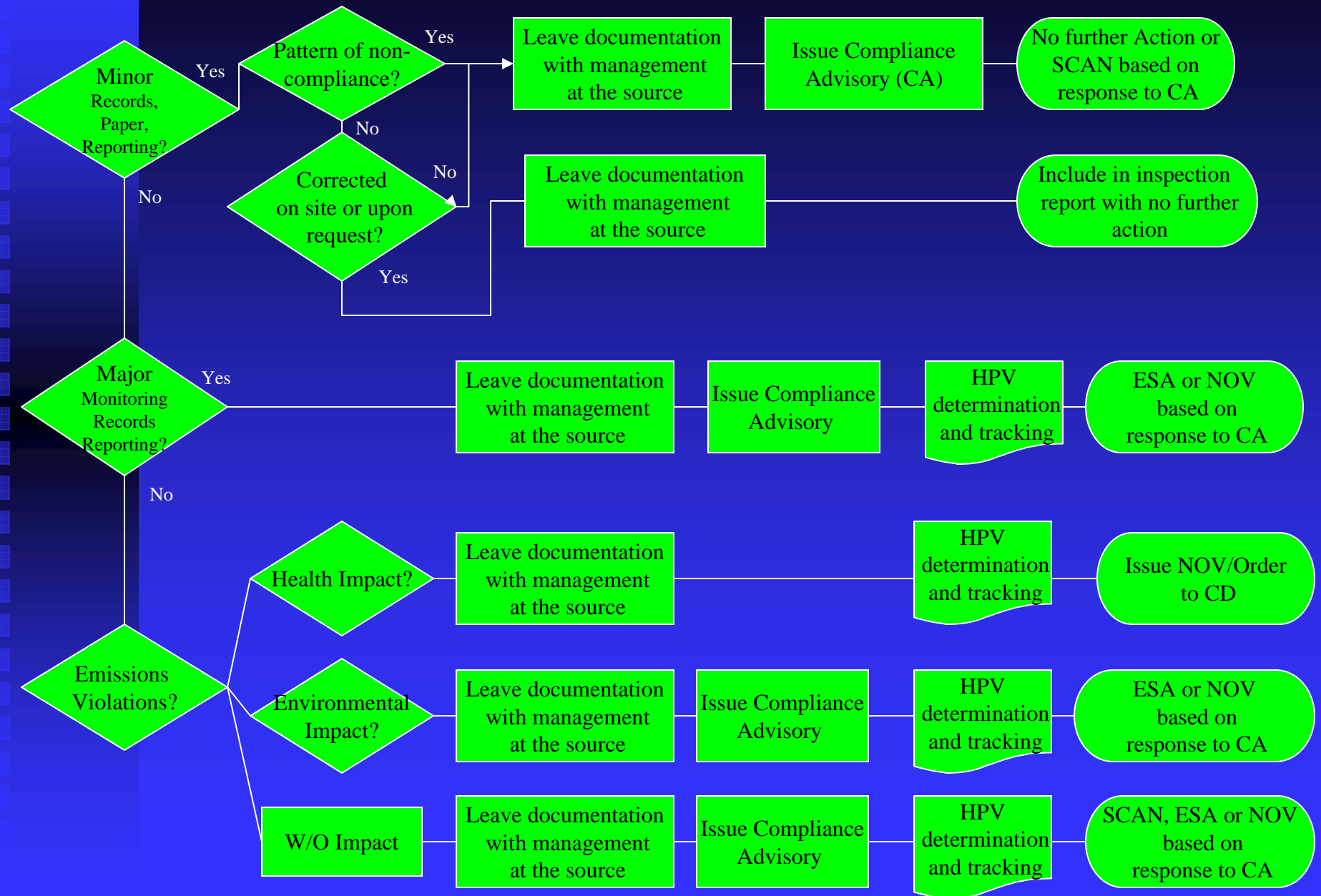
Enforcement Process

The Utah Division of Air Quality's
response to observed violations

Enforcement Process Flow



Major Source Response to Non-compliance



Two distinct processes for resolution

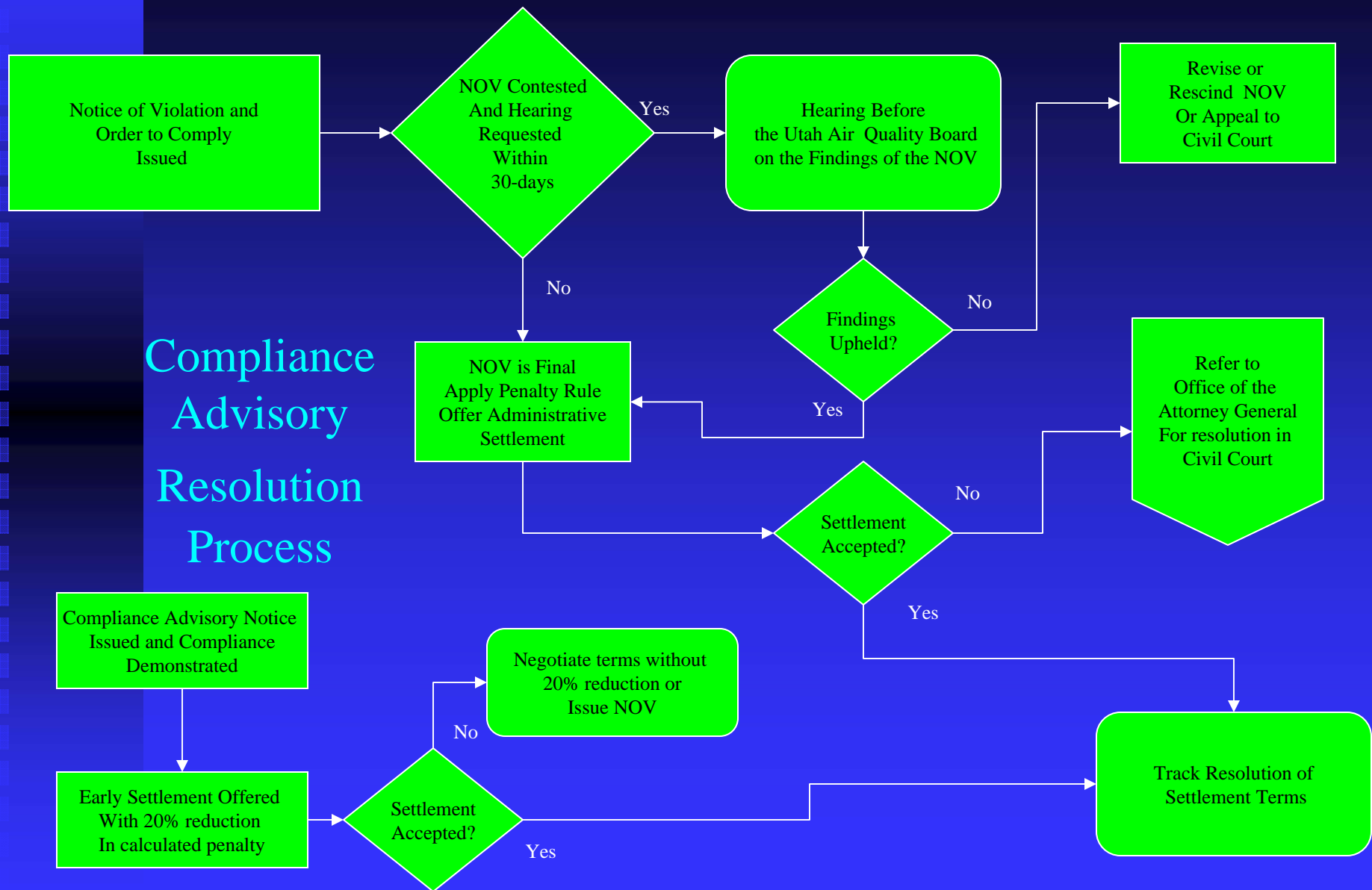
Informal Compliance Advisory Notice (CAN) and Early Administrative Settlement

- Resolves the alleged violations without admissions of findings
- Requires a return to full compliance
- Requires a plan to prevent future violations
- Requires the payment of monetary penalties with 20% reduction for early settlement

Notice Of Violation (NOV) Formal Resolution

- The violations are final unless appealed within 30-days
- Settlement is formal
- Utah Office of the Attorney General may file for collection of penalties in civil court
- The Penalty Rule – R307-130 is used to determine reasonable and appropriate penalties

NOV resolution process



Requests for a Formal Hearing

- To contest the findings of the NOV a formal administrative hearing must be requested or reserved in writing within 30 days pursuant to Utah Code Annotated 19-2-110
 - ◆ The response must specifically request a “hearing.” Language such as a request for a “meeting to discuss” is not a request for a hearing
 - ◆ The hearing is a formal proceeding of the Utah Air Quality Board with the Office of the Attorney General representing the Division of Air Quality
 - ◆ The hearing establishes the facts only, the penalty rule is then applied to settle the NOV or the NOV is referred to civil court for resolution.

Administrative Settlements

- Negotiated administrative process within the constraints of EPA delegation
- Requires timely compliance with the “Order” portion of the NOV
 - ◆ Return to compliance
 - ◆ Plan to prevent future violations
- Payment of “substantial monetary penalties”
 - ◆ EPA reviews the settlement terms for HPV and Major Sources
- The economic benefit of the violation is collected
- Implementation of Supplemental Environmental Projects are encouraged to reduce the cash portion of penalties

Penalties

- Established by statute and rule R307-130
- Categories based on potential impact
 - ◆ Category A - \$7,000 - \$10,000 per day, per violation
 - ◆ Category B - \$2,000-7,000 per day, per violation
 - ◆ Category C – Up to \$2,000 per day, per violation
 - ◆ Category D – Up to \$299 per day, per violation

Penalties

- Adjustments are made based upon
 - ◆ The type of emissions involved
 - ◆ Good faith effort to comply
 - ◆ Degree of wilfulness and/or negligence
 - ◆ History of compliance or noncompliance
 - ◆ Economic benefit of noncompliance
 - ◆ Inability to pay
- All penalty money is deposited into the state general fund

Penalties continued

■ EPA's policy

“Without penalties there would be no deterrence, as regulated entities would have little incentive to comply. Additionally, penalties are necessary as a matter of fairness to those regulated entities that make the necessary expenditures to comply on time: violators should not be allowed to obtain an economic advantage over their competitors who complied.”

Penalty Calculation Worksheet

Utah Division of Air Quality General Administrative Penalty Worksheet										
Source:		Events Category	Class:		Home					
SID No.:			Violation Date:		Penalty Policy					
HPV:			Gravity Criteria (Gc) No(0), Possibly(1), Probably(2), Definitely(3)		Gravity Criteria					
Table 1: Gravity Criteria										
Citation	Description of the violation Description of Events Resulting in Excess Emissions			Gc 1	Gc 2	Gc 3	Gc 4	Gc 6	Daily Gravity	Accumulated Gravity
Gc 5 History of violations within the last five (5) years? Enter "d" in Category →									\$0.00	\$0.00
Violations of the same rule within the last five (5) years? Enter "d" in Category →									\$0.00	\$0.00
Total Gravity									\$0.00	\$0.00
Table 2: Adjustments										
Economic Benefit	EPA "BEN" Model (Collected)									
Other										
	Other Monies Collected									
	Early Settlement Reduction (20%) -								Remove 20% Status	\$0.00
Total Penalty									\$0.00	
Gravity Criteria Definitions										
Gc 1. Was the violation a result of excess emissions and/or reporting?										
(0) Answer "no"		If the violation was not the result emissions, reporting, or other								
(1) Answer "possibly"		If a minor reporting or other problem occurred, but no emissions were involved								
(2) Answer "probably"		If a reporting or other problem occurred which involved emissions								
(3) Answer "definitely"		If a permit reporting or other significant problem occurred involving emissions								
Gc 2. Was it a willful or knowing violation?										
(0) Answer "no"		If the violator obviously did not know that the action or inaction constituted a violation?								
(1) Answer "possibly"		If the violator should have know								
(2) Answer "probably"		If the violator likely knew								

Working
Document
with
Categories
and
Adjustments
derived from
R307-130

Keeping penalty adjustments in a source's favor

- Correct the problems quickly, respond promptly to requests for information
- Evaluate the process and submit a compliance plan that prevents future violations
- Don't have any repeat violations within 5 years